

## REMARKS

### Summary of the Response

The claims have not been amended. Claims 1-26 remain pending in this application. Reconsideration of the claims is respectfully requested.

### Summary of the Rejections

Claims 1-6, 13-18, and 21-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable (obvious) over U.S. Patent No. 6,044,363 to Mori in view of U.S. Patent No. 6,415,270 to Rackson and U.S. Patent No. 6,044,363 to Barzilai. Claims 7-12, 19, 20 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Mori in view of Barzilai. These rejections are respectfully traversed.

### Inconsistencies and Errors in Office Action

On the onset, Applicant is very troubled by the burden placed on the Applicant to respond to the series of Office Actions issued in the case so far, which Office Action were clearly not properly prepared by the Examiner. The Applicant was burdened with expenses and time to respond to each of the several Office Actions, which were replete with errors and inconsistencies. Applicant filed an RCE even in light of a Final Office Action, the finality of which was clearly premature. In the Advisory Action dated May 1, 2002, the Examiner referred to "proposed amendment(s)" where in fact there were no amendment of any sort up to that point.

The many errors and inconsistencies in the Office Actions include at least the following in the present Office Action, some of which were inherited from earlier Office Actions as the

Examiner “copied” many of the sections in the earlier Office Actions into the current Office Action:

(i) Inconsistent and Improper Claim Rejections

In the current Office Action, the Examiner rejected claims 1-6, 13-18 and 21-25 based on a combination of three (3) references (Mori, Rackson and Brazilai). Out of this group of claims, claims 1, 13 and 25 are independent claims. The Examiner also rejected claims 7-12, 19, 20 and 26 based on a combination of two (2) references (Mori and Brazilai). Out of this second group of claims, claims 8, 20 and 26 are independent claims. Claim 7 is in fact a dependent claim, based on independent claim 1, and claim 19 is in fact a dependent claim based on independent claim 13. It is inconsistent, and therefore improper to reject an independent claim based on fewer references than the number of references applied to the rejection of its base claim. In this case, independent claim 1 was rejected based on three references, but dependent claim 7 was rejected based on only two references; independent claim 13 was rejected based on three references, but dependent claim 19 was rejected based on only one reference. Accordingly, at least the rejections of dependent claims 7 and 19 are inconsistent and therefore improper.

Applicant respectfully requests the Examiner to properly set forth the basis of his rejection in the next Office Action.

(ii) Reference to Prior Art not identified

The Examiner referred to a “Ricker” reference (e.g., in paragraphs 6, 12 and 22 in the Office Action), which had not been identified anywhere in the Office Action. Applicant can only suspect that the Examiner made a typographical error when referring to Ricker, where he

may have intended to refer to Rackson. The mixed references to Ricker and Rackson in the same section of the Office Action is confusing and improper.

Applicant respectfully requests the Examiner to restate properly the basis of his rejection.

(iii) Misquoted/Misreading Sections in Mori

The Examiner misquoted or misread many sections of the Mori reference. In fact, Applicant believes that the Examiner misquoted or misread ALL the sections referenced to Mori in at least paragraphs 6, 12 and 22 in the Office Action. Applicant respectfully request the Examiner to carefully review the Office Action to properly apply the prior art and point to the correct sections in the references.

For example, in paragraph 6 in the Office Action, the Examiner pointed to specific sections in Mori, where corresponding support for the claimed limitations are supposed to be found. However, Applicant failed to follow how the sections in Mori as referenced by the Examiner in the office action are applicable. For example, Applicant does not see where on col. 1, line 59-col. 2, line 7, and col. 14, lines 10-34, did Mori disclose the buyer specifying at the start of the auction the number N of best bids to be considered from the auction, as proposed by the Examiner.

As a further example, in paragraph 6 in the Office Action, the Examiner referenced Mori, col. 2, lines 1-3, to show that it teaches the broker making the number N available to bidder. In fact, the referenced section reads: "Furthermore, in the case of an auction, bidders must cope with the present situations extemporaneously. Therefore, the bidders must participate on-line and in real time.

The Office Action is replete with such errors. Many of such errors were repeated and inherited since the first Office Action in the long history of the case. The Examiner failed to address those errors, despite the fact that Applicant made a good faith effort to point out the many errors and inconsistencies in the earlier Office Actions. Applicant should not be burdened to guess how the Examiner should have relied upon Mori in an attempt to respond to the Office Action. The Examiner should have specifically and correctly set forth the basis for rejections, so as to allow the Applicant to fully respond to the Office Action.

As demonstrated above, since the Examiner failed to properly set forth the basis of rejection of at least claims 1-7, 13-19 and 25 in the present action, should the Examiner maintains his rejection, it would have to be based on new grounds that were not specified in the present office action. Such new grounds of rejection are not necessitated by any claim amendment, hence further office action should not be made final, in order not to unreasonably placing a burden on the Applicant and compromise Applicant's opportunity to fully respond to such new rejections.

Notwithstanding the foregoing, in the interest of forwarding this case to early allowance, Applicant is making another attempt to clarify the present invention, and to distinguish from the prior art references.

#### Summary of the Invention

It is clear from the Examiner's comments that he is confusing the roles between **buyer and sellers (in the disclosed embodiment, service providers) or biddee (the party requesting bids) and bidders**. The Examiner failed to appreciate that in the present invention, the **sellers** are the **bidders**. **The buyer is not a bidder** in the present invention, but a **biddee**. The auction

is open to **sellers/bidders** for bidding against each other, for the benefit of a **buyer/biddee**. The present invention is not directed to an auction in which several buyers bid for the goods or services of one seller.

In accordance with one aspect of the present invention, at the outset of the auction, the **biddee (not the bidders)** specifies the N best bids to be displayed for the **biddee's** consideration in awarding the bid to a **bidder/seller among all the seller bidders**. By specifying N **at the start** of the bid process, the **bidders** are "motivated" to try for the bid even though some of them may not qualify for the best bid based on price alone, but may stand to be awarded the bid based on factors other than best pricing. The **biddee** has more choices in selecting a **seller bidder** from N **seller bidders**, based on factors other than best pricing. Accordingly, the higher the value of N, the more options for the **biddee buyer**. However, while a larger N provides more options, it is also inherent in this process that the **biddee** would have to live with the compromise of less competitive price bidding in view of the increased opportunities for the **bidders** to compete on factors other than pricing.

In other words, on the **seller bidder** side, since the value of N is made known to the **seller bidders** on the outset of the auction, **seller bidders** would bid in a way such that even when one of the sellers knows that it cannot bid the lowest price, such seller can still have a chance to compete by trying to have its bid fall within the N best bids to obtain consideration by the **buyer biddee**. By requesting to see fewer bids (smaller N), the **buyer biddee** would have less opportunity to evaluate service providers based on factors other than pricing, thereby encouraging fierce price competition (e.g., when N=1, maximum price competition, but no option for the **biddee**). The reverse is true, when N is larger, the **biddee** has more choices in

selection from N best bids from **bidders**, but the **bidders** would tend not to bid as aggressively, knowing that their bids would be considered as long as they fall within the N best bids.

The net effect is that the **biddee** by specifying N best bids, can effectively control the price/options tradeoff at the onset of the auction process, and encourage the **bidders** to provide their lowest bids when pricing is important (small N). This lets the buyers make their final decision based on factors in addition to price, and yet at the lowest price possible given the options.

In another aspect of the present invention, a rating system is employed to rate the **biddee**'s history of following through with bid awards in prior auctions initiated by the same buyer. The buyer's rating is made known to the **seller binder** before the service provider submits a bid, so that the seller binders can consider the **biddee**'s rating before bidding.

### Summary of Arguments

The Examiner repeated many of the bases of the rejections in the early office actions. Applicant remains in disagreement with the Examiner's basis of rejections. Applicant incorporates all the arguments previously presented in the response to the earlier office actions. Further, Applicant makes additional arguments herein below to traverse the rejections.

In all the arguments presented below, Applicant invite the Examiner to direct close attention to the different functions and perspectives of **bidders** and **biddee**. In the present invention, the **biddee** (NOT bidders) sets forth N, the number of best bids to be considered, at the start of the auction. Further, it is the rating of the **biddee** (NOT bidders) that is being made available to the bidders.

In fact, regardless of whether the **bidders** are buyers or sellers, and whether the **biddee** is a buyer or seller, the clear distinguishing factor is that for the present invention, it is the **biddee** who specifies the number N, and it is the rating of the **biddee** that is being made available to the **bidders**.

None of the prior art, taken alone or in combination, disclose or make obvious the present invention.

Traversal of Prior Art Rejection of Claims 1-6, 13-18, and 21-25 Based on Mori, Rackson and Brazilai

On the onset, Applicant failed to appreciate how Mori is even applicable to the present invention. **For Mori, the bidders are buyers, not sellers as is in the present invention.** Further, specifically referring to independent claims 1, 13 and 25, Mori does not teach or suggest an auction system or process in which the **biddee specifies the number N of best bids** to be consider from the auction.

The Examiner pointed to specific sections in Mori, where support for the claimed limitations are supposed to be found. However, Applicant failed to follow how the sections in Mori as referenced by the Examiner in the office action are applicable. For example, Applicant does not see where on col. 1, line 59-col. 2, line 7, and col. 14, lines 10-34, did Mori disclose the buyer or biddee specifying at the start of the auction the number N of best bids to be considered from the auction, as proposed by the Examiner.

Brazilai does not make up for the deficiencies of Mori. Brazilai's auction system involves multiple **buyers bidders** bidding to purchase a product. They each can submit multiple

bids (e.g., up to 8 bids). This is not the same as the inventive concept in which the **buyer** is not the bidder, but the **buyer biddee** specifies N best bids (from the **seller bidders**) to be considered from the auction, and further the **buyer** selects a **bidder (seller)** from one of the N lowest bids or choosing not to execute, as required by claims 1, 13 and 25 of the present invention.

Rackson does not make up for the deficiencies of Mori and Brazilai. In contrast, Rackson does not disclose the **biddee** specifying the number N of best bids to be considered by the **biddee**. In Rackson, the biddee (who happens to be seller) does not specify N, even if the bidders' performance statistics is maintained in a database.

In view of the foregoing, Applicant respectfully submits that the independent claims 1, 13 and 25, and all the claims dependent there from, are not rendered obvious over Mori, Rackson and Brazilai. Accordingly, the claims 1-6, 13-18 and 21-25 are patentable over these references.

Traversal of Prior Art Rejection of Claims 7-12, 19, 20 and 26 based on Mori In Combination With Barzilia

Barzilia does not make up for the deficiencies of Mori. Barzilia, like Mori, disclosed a system in which a **buyer bidder** (referred to as a "user" in Barzilia, in quite a different context) can set the number of bids that the bidder can place on a product or service that is being auctioned. The **seller/biddee** do not bid in Barzilia, in contrast to the **seller bidders** in the present invention.

Barzilia, like Mori, also is not directed to a process or system in which a rating is provided to the **buyer** who submitted a service requested to a broker for auctioning among **seller bidders**, as required by dependent claim 7 and 19, and independent claims 8 and 26. In Barzilai, **buyers are bidders**. The **transaction history** for the bidding buyers is provided in Barzilia. In

contrast, a **bid follow-through rating** is provided for the **biddee buyer** in the present invention. Applicant respectfully submits that there is absolutely no teaching or suggestion from a fair reading of Barzilai, any motivation to provide a buyer rating that includes information on the buyer's follow-through of bids in prior auctions.

The present invention provides the **biddee's** history of following through with bid awards in prior auctions initiated by the same buyer. The buyer's rating is made known to the **seller binder** before the service provider submits a bid, so that the seller binders can consider the buyer rating in deciding on bidding. Because the **biddee** can receive N best bids, he is not obligated to award the bid to any one of the N **sellers bidders**. The **biddee** may back out of the auction and not award the bid to any **seller bidders**. It would provide **sellers bidders** comfort to know the frequency of the **biddee** following through with the bids for jobs that he submitted for auctioning by sellers. This is not a rating for the seller bidders. This rating system deters a buyer from casually shopping for pricing with little chance of following through with the auction. A buyer who frequently submits jobs without executing them will get a low rating. A low rating discourages service providers from bidding, thereby decreasing the competitiveness of an auction. As a result, a low-rated buyer should expect to pay more for the service provided. Consequently, a buyer will be discouraged from submitting jobs that have a low chance of occurring. The **biddee follow-through rating** gives the **seller bidders** a better sense of the buyer's commitment prior to deciding on allocating resources to participate in bidding at the auction.

In prior art auctions such as Mori and Barzilai, in which several buyers bid for the highest purchase price to a seller, the auction process is initiated by the seller. The seller has no control over the buyer history and who buyer may submit bids to the seller. Further, once the auction is

over, the bid is awarded to the highest buyer bidder. Such buyer is obligated to consummate the transaction. Thus in that situation, the follow-through rating of a buyer would not be all that meaningful or relevant to the seller, as the buyer who bid the highest price has to consummate the transaction regardless of his rating (e.g., his credit card would be automatically charged if he is the highest bidder). In some prior art systems, the **seller bidder** is rated, such as to give comfort to the buyers as to which seller provides acceptable post-auction services, reliability, etc.

It is clear that Barzilai does not make up for the deficiencies of Mori. Claim 20 specifically recites that the potential **bidders (sellers)** consider the buyer rating regarding follow-through of bids, in deciding on bidding. This is different from the buyer profile given to the **buyer bidders in Barzilai** and how the buyer profile is utilized.

Accordingly, even if Mori and Barzilai can somehow be combined in the manner suggested here only by the Examiner, the present invention is not obtained. Further, the combination would not teach a follow-through rating for the buyers which is considered by the seller binders prior to bidding. Further, such combination can only take place as a result of improper hindsight reconstruction given the disclosure of the present invention.

In view of the foregoing, Applicant respectfully submits that the dependent claims 7 and 19 from claim 1 and claim 13 respectively, and the independent claims 8 and 26 and all the claims dependent there from, are not rendered obvious over Mori in view of Barzilai. Accordingly, the claims 7-12, 19, 20 and 26 are patentable over Mori and Barzilai.

CONCLUSION

In view of all the foregoing, Applicant submits that the claims pending in this application are patentable over the references of record and are in condition for allowance. Such action at an early date is earnestly solicited. **The Examiner is invited to call the undersigned representative to discuss any outstanding issues that may not have been adequately addressed in this response.**

Respectfully submitted,



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